



January 14, 2004

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Costa Mesa  
Sanitary District

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Supervisor  
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**BILL CAMPBELL**  
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**SUSAN WILSON**  
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Irvine Ranch Water  
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ALTERNATE  
**JAMES W. SILVA**  
Supervisor  
Second District

ALTERNATE  
**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**DANA M. SMITH**  
Executive Officer

**TO:** Local Agency Formation Commission

**FROM:** Executive Officer  
Policy Analyst

**SUBJECT:** Deny Request for Reconsideration – *MCAS El Toro  
Annexation to the City of Irvine (CA 03-15)*

On November 12, 2003, your Commission approved the proposed *MCAS El Toro Annexation to the City of Irvine (CA 03-15)* – an application to annex 4,287 acres of uninhabited, unincorporated former military base property to the City of Irvine. Following the Commission's approval of the city's annexation application, the law firm of Chevalier, Allen and Lichman representing the Airport Working Group (AWG), filed a written request with LAFCO on December 9, 2003 for reconsideration of the Commission's November 12<sup>th</sup> determination.

The following report provides an overview of the request for reconsideration law, a summary of the Airport Working Group's stated reasons for the request and staff analysis, conclusions and recommendation.

### Legal Requirements

In 2001, the request for reconsideration law was amended to include language requiring that reconsideration of a LAFCO commission action should occur *only* if there were unknown or undiscovered facts at the time of the public hearing. Specifically, Government Code Section 56895 requires that any request for reconsideration filed with LAFCO shall:

- State the specific modification to the resolution being requested
- State what new or different facts that *could not have been previously presented* are claimed to warrant the reconsideration

At the November 12, 2003 hearing, staff recommended approval of the annexation application based on the proposal's ability to meet the

LAFCO's legislative charge and responsibilities to promote efficient and logical extension of local government services. Your Commission approved the annexation proposal based on the following facts:

1. Development of the property is imminent and the area will require the extension of municipal services
2. Over 30 years ago, your commission placed the proposed annexation territory within the City of Irvine's sphere of influence, further identifying the city as the most logical service provider to the area
3. The city's financing plan for development of the proposed annexation territory is feasible
4. The city's proposal identifies a net fiscal benefit to both the city and county at buildout of the property under the city's development plan

The following outlines AWG's reasons for requesting reconsideration of the Commission's approval.

#### **AWG Request for Reconsideration**

The Airport Working Group is requesting that the Commission reverse its approval of the City of Irvine's application to annex the MCAS El Toro property. However, AWG does not provide any *new or different facts that could not have been previously presented* and should be denied on that basis alone. Procedurally, however, staff has summarized the three main points of the AWG request and provided analysis of each based on the requirements of the request for reconsideration law. A copy of the AWG request for consideration is attached to this staff report as Attachment A. The minutes for the November 12, 2003 commission meeting are also attached as Attachment B.

1. *The City of Irvine's Environmental Impact Report (EIR) fails to comply with the California Environmental Quality Act (CEQA).*

The AWG request contends that the EIR is fatally flawed in its analysis of traffic impacts and air quality. The applicant states that the city's program EIR omits information, analysis and/or mitigation measures regarding:

- Traffic impacts of the projected future development of areas surrounding the proposed annexation territory including the collective Northern Sphere development area,
- Increased truck traffic related to MCAS El Toro runway demolition and debris transport
- Dust and/or diesel emissions from MCAS El Toro runway demolition and debris transport.

Your Commission should note that the city's Program EIR for the Orange County Great Park, the intended development project for the proposed annexation territory, was made available for public comment well before its final certification by the Irvine City Council on May 27, 2003. By definition, any and all stated concerns regarding the applicable EIR *could have been* raised prior to the November 12, 2003 LAFCO public hearing on the MCAS El Toro annexation application. Therefore, there is no information stated in the AWG request that could not have been previously presented.

2. The project fails to comply with Government Code Section 56668, showing that Irvine will have sufficient revenues to provide services to the proposed annexation area.  
The request for reconsideration states that the city's financial plan is "dependent upon unsupported and unwarranted presumptions" primarily pertaining to:

- The requirement for all developer/buyers to sign the development agreement and pay the requisite developer fees
- The ability of a California University to pay an allotted share of infrastructure costs
- Delays in infrastructure development and the project's financial viability
- Sales tax revenue estimates

AWG's position regarding the financial feasibility of the project does not point to any new, different, or previously unknown facts or information. Rather, their argument consists of a subjective critique of the city's financial plan and subsequent analysis of that plan by LAFCO and its financial consultant. All relevant information and analysis of the city's funding plan was readily accessible to the general public in advance of the November 12, 2003 commission meeting. Two weeks prior to the LAFCO meeting, staff made available the annexation staff report including the financial feasibility analysis produced by LAFCO's consultant, Economic and Planning Systems, Inc. (EPS). Furthermore, EPS addressed each of AWG's funding plan issues noted above either through the written report or during the subsequent presentation and response to comments during the November 12<sup>th</sup> Commission hearing (see Attachment B).

3. Lack of evidence that LAFCO obtained approval of the annexation from all property owners, specifically the Federal Aviation Administration (FAA).

AWG declared that the annexation should be reconsidered based on the lack of consent from the FAA which received property from the Department of the Navy via a Federal agency transfer on December 3, 2001. This issue was raised during the public comment portion of the November 12<sup>th</sup> public hearing. The attorney for the City of Irvine responded in-turn to the public comment and upon completion of the public hearing process and commission discussion, your

Commission approved the annexation (see Attachment B). Therefore, this issue cannot be considered as new or different facts presented after the hearing.

### **Analysis and Conclusions**

At the November 12<sup>th</sup> hearing, your Commission approved the city's application for annexation based on facts and analysis presented from a variety of sources. In conducting the analysis for this request for reconsideration, staff did not attempt to evaluate whether or not AWG's opinion of the city's funding plan is accurate, or gage the true validity of its claims against the city's EIR, or argue the need for consent from the FAA. Staff's conclusion is that the Commission has one question to address: *Does the applicant present new or different facts that could not have been previously presented that warrant a reconsideration of the Commission's decision?* In this case, the issues identified in the AWG request for reconsideration either could have been or were discussed or presented prior to or during the November 12, 2003 LAFCO Commission meeting public hearing. Therefore, the request does not meet the criteria for reconsideration established under Government Code Section 56895 and should be denied.

### **RECOMMENDATION**

Staff recommends that the Commission:

1. Deny the Airport Working Group's request for reconsideration.

Respectfully,

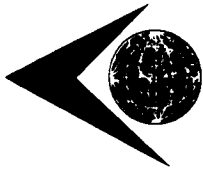
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DANA M. SMITH

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KIM A. KOEPPEN

Attachments:      A. AWG Request for Reconsideration  
                            B. Minutes of November 12, 2003 LAFCO Regular Meeting



**CHEVALIER, ALLEN & LICHMAN LLP**

**Attorneys at Law**

Commercial Litigation • Aviation Law & Litigation • Environmental Law & Litigation

December 8, 2003

RECEIVED  
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Gary M. Allen, Ph.D.  
John Chevalier, Jr.\*  
Bernie C. Hart  
Barbara E. Lichman, Ph.D.  
Jacqueline E. Serrao, LL.M.°  
Frederick C. Woodruff+

LOCAL AGENCY FORMATION COMMISSION  
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By Federal Express

Dana M. Smith, Executive Director  
Orange County Local Agency Formation Commission  
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Re: Request for Reconsideration (CA03-15)

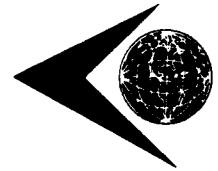
Dear Ms. Smith:

We represent the Airport Working Group of Orange County, Inc. ("AWG"). Pursuant to *Cal. Gov. Code* § 56895, AWG requests reconsideration of the Orange County Local Agency Formation Commission's ("LAFCO") action on November 12, 2003 approving the annexation of the former El Toro Marine Corps Air Station ("MCAS") by the City of Irvine ("Irvine") on the following grounds:

(1) The Environmental Impact Report ("EIR") prepared by "Irvine" and relied on by LAFCO for its approval action fails to comply with the requirements of the California Environmental Quality Act ("CEQA") (*Pub. Resources Code* § 21000, *et seq.*) and its implementing Guidelines, 14 *Cal. Code Regs.* § 15000, *et seq.*, in that, among other things:

(a) the EIR's analysis of traffic impacts is fatally flawed in that it omits information and analysis critical to its conclusions thus precluding informed decision making as well as informed public participation. *Protect Our Water v. County of Merced*, 110 Cal.App.4th 362, 370 (2003). Specifically, the EIR omits from the traffic analysis over 8,000 ADTs arising from County development of a 100 acre site in Planning Area Zone ("PAZ") 23 and 4,753 trips from the County's new Musick Jail facility which, although not technically included in the project, should potentially be included in its cumulative impact analysis;

(b) omits to analyze the traffic impact of the hundreds of trucks that will potentially be needed to haul more than 31 million cubic feet of concrete and asphalt debris



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arising from the demolition of runways and other paved areas from the project site to off-site facilities for recycling; and

(c) omits to analyze any enforceable measures to mitigate the traffic impacts of the project when taken together with the already approved Spectrum 8/Planning Area 40 project consisting of more than 730 acres and resulting in an increase of 102,739 ADTs ("Spectrum"), and the Northern Sphere project, comprising development of 7,743 acres and resulting in an increase of 254,873 ADTs; and

(d) the EIR's air quality analysis is similarly flawed where it lacks:

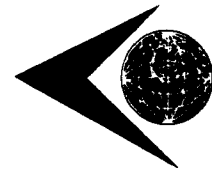
(1) technical analysis supporting the belated conclusion, in Irvine's Response to Comments, that the fugitive dust impacts of runway demolition activities, unanalyzed in the DEIR, will be both independently and cumulatively insignificant;

(2) analysis of the fugitive dust emissions impacts of the diesel trucks and loading equipment needed for the hauling of 31 million cubic feet of concrete and other paving materials both within and outside the project site; and

(3) omission of enforceable mitigation measures, where the EIR fails to provide evidence of a fugitive dust control plan approved by either the South Coast Air Quality Management District ("SCAQMD") or Irvine, pursuant to the requirements of SCAQMD Rule 403.

LAFCO cannot dismiss these omissions as inconsequential. The consistent weight of authority deems lesser analytic deficiencies fatal to an EIR's integrity, see, *e.g.*, *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 724 (1990); *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of City of Oakland*, 91 Cal.App.4th 1344, 1371 (2001), and these issues are not merely AWG's "unsupported lay opinion", but reflect the views of at least two government agencies with jurisdiction over the impacts at issue, California Department of Transportation ("Caltrans") and the Orange County Transportation Agency ("OCTA"). Nor can LAFCO's reliance on the EIR's designation as a "program" EIR save it, even where, as here,

"A general plan amendment is treated merely as a first phase with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a first phase general plan amendment must necessarily include consideration of the larger project, *i.e.*, the future development permitted by the



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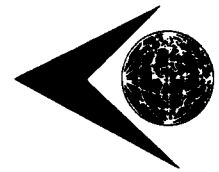
amendment. Only then can the ultimate effect of the amendment upon the physical environment be addressed.” *City of Redlands v. County of San Bernardino*, 96 Cal.App.4th 398, 409 (2002).

As “CEQA advances a policy of requiring an agency to evaluate the environmental effects of a project at the earliest possible stage in the planning process . . . by failing to accurately describe the agency action and by deferring full environmental assessment of the consequences of such action, [a governmental jurisdiction] has failed to comply with CEQA’s policies and requirements.” *Id.* at 410.

(2) The project fails to comply with the requirements of *Cal. Gov. Code* § 56668 in that there is not an adequate showing that Irvine will have sufficient revenues following the boundary change to provide the services which are the subject of the annexation.

(a) The determination that Irvine has the financial ability to provide adequate services to the annexed land is dependent upon unsupported and unwarranted presumptions. “Irvine’s” funding plan for the financing of project major improvement and infrastructure elements is based on the presumption that all of the developers/buyers will sign the development agreement. In fact, LAFCO’s own Staff Report concludes that this is vital to Irvine’s ability to raise the required \$372 million for development and infrastructure improvements and that “if a development agreement is not signed by for any of the parcels, or any buyer attempts to renegotiate the development agreement, the financial feasibility of the project is unclear” (LAFCO Executive Summary, p. 26). It is also undisputed there is no requirement for any one, much less all, of the developers to sign the development agreement. Instead, the Staff Report assumes that it is “highly unlikely that any of the buyers who purchase one of the parcels through the competitive process will not execute the development agreement.” Neither the LAFCO Staff Report nor the EPS Great Park Financial Feasibility and Fiscal Analysis dated October, 2003 (“EPS Analysis”) set forth any basis for such a presumption and there are simply no facts in the record supporting it. To the contrary, this assumption is dubious especially in view of the requirement that the developer/buyer would have to pay initial fees ranging from \$30 million to \$68 million depending on the parcel (LAFCO Executive Summary, p. 23) and additional fees in the creation of a Community Facilities District (“CFD”) to raise an additional \$172 million in infrastructure funding (EPS Analysis, p. 7).

(b) The approval of Irvine’s financial plan is also based on a presumption that the University proposed for the “project” site will fund its allocated share of infrastructure costs either by contributing to park maintenance special taxes or by making an up front payment (EPS Analysis, p. 5). However, the EPS Analysis concedes that the ability of California Universities to pay development costs has been called into question in recent litigation. It is our



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understanding that this very issue is scheduled to be determined by the California Supreme Court in a pending case. Until that decision is rendered, this presumption is premature and unwarranted. Failure or inability of the University to pay its share would result in a shortfall of the maintenance revenues by an estimated \$553,000 at inception and \$704,000 at buildout (EPS Analysis, Table 11, p. 25).

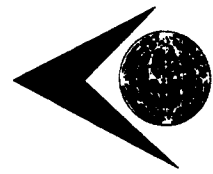
(c) The viability of the project's financial plan is dependent on there being no delays in the infrastructure construction schedule (LAFCO Executive Summary, pp. 22, 23). Both the LAFCO Executive Summary (pp. 22, 23) and the EPS Analysis (p. 5) concede that infrastructure construction delays would undermine or impair the project funding and Irvine's ability to finance the project. This presumption, like the others discussed above, is relied on without any stated basis or factual support in the record. This presumption is particularly tenuous given the recognition that the "infrastructure development schedule is quite aggressive" (EPS Analysis, p. 5).

(d) The estimates given by Irvine as anticipated sales tax revenues are unduly optimistic and unreasonable. More than 2/3rds of Irvine's projected revenues for this project are from sales tax payments (EPS Analysis, Table 8, p. 20). Examples of this are the \$2 million of sales tax from the proposed auto center which would constitute 53% of all sales taxes or the sales tax revenues from the educational retail. In addition, 75% of the tax producing retail development would not even begin to come on line until 2010 whereas over 80% of the service demanding residential development would be completed and occupied by 2009.

(3) There is no evidence in the record that LAFCO obtained the permission of all property owners of record in the project area before approving the annexation, as required by the *Cal. Government Code*. Even though the FAA obtained the 900 acre "habitat area" by a Federal agency transfer some time ago, and even though the record contains express consent from other property owners, as of November 12, it contained no affirmative representation from FAA of consent to the transfer. Consequently, the current approval is void and must be reaffirmed upon receipt of consent.

In summary, approval of the annexation requested by Irvine is contrary to the requirements of both CEQA and § 56668 of *Cal. Gov. Code*. AWG respectfully requests that the





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approval be reversed and Irvine's application be denied until such time as Irvine is able to comply with the requirements of these statutes.

Sincerely,

CHEVALIER, ALLEN & LICHMAN, LLP

Barbara E. Lichman, Ph.D.

## MINUTES

### LAFCO REGULAR MEETING

Wednesday, November 12, 2003, 9:00 a.m.

Planning Commission Hearing Room, Hall of Administration  
10 Civic Center Plaza, Santa Ana

*(Any member of the public may request to speak on any agenda item at the time that item is being considered by the Commission.)*

**1. CALL TO ORDER**

**Chair Arlene Schafer** called the regular meeting of the Local Agency Formation Commission (LAFCO) to order at 9:04 a.m.

**2. PLEDGE OF ALLEGIANCE**

**Commissioner Susan Wilson** led the pledge of allegiance.

**3. ROLL CALL**

The following commissioners and alternates were present:

- **Commissioner Randal Bressette**
- **Commissioner Bill Campbell**
- **Commissioner Peter Herzog**
- **Commissioner Arlene Schafer**
- **Commissioner Charles Smith**
- **Commissioner Susan Wilson**
- **Commissioner John Withers**
- **Alternate Commissioner Robert Bouer**
- **Alternate Commissioner James Silva**
- **Alternate Commissioner Charley Wilson**

The following LAFCO staff members were present:

- General Counsel Clark Alsop
- Executive Officer Dana M. Smith
- Assistant Executive Officer Bob Aldrich
- Project Manager Ken Lee
- Policy Analyst Kim Koeppen
- Policy Analyst Carolyn Thomas
- Policy Analyst Jay Wong
- Executive Assistant/Commission Clerk Danielle Ball
- Administrative Assistant Daphne Charles

#### **4. APPROVAL OF MINUTES**

a.) October 8, 2003 – Regular Commission Meeting

**MOTION:** Approve minutes from October 8, 2003 without revision  
(Randal Bressette)

**SECOND:** Charles Smith

**FOR:** Randal Bressette, Peter Herzog, Arlene Schafer, Charles  
Smith, Susan Wilson, John Withers

**AGAINST:** None

**ABSTAIN:** Bill Campbell

**MOTION PASSED**

#### **5. PUBLIC COMMENT**

**Chair Schafer** requested public comments on any non-agenda item and received no response. She closed the public comment agenda item without any statements from the public.

#### **6. CONSENT CALENDAR**

a.) Brea Sports Park Annexation to the City of Brea (CA 00-18)

b.) LAFCO Business Report

c.) Update on the Costa Mesa and Newport Beach Islands Annexations

**Chair Schafer** pulled the consent calendar item 6c for further discussion by the Commission.

**MOTION:** Approve consent calendar items 6a and 6b (Charles Smith)

**SECOND:** Randal Bressette

**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer,  
Charles Smith, Susan Wilson, John Withers

**AGAINST:** None

**ABSTAIN:** None

**MOTION PASSED**

**Chair Schafer** stated that discussion related to consent calendar item 6c would be addressed following the public hearing items before the Commission for consideration.

#### **7. PUBLIC HEARING**

a.) MCAS El Toro Annexation to the City of Irvine (CA 03-15)

b.) TRA Annexation to the Orange County Vector Control District (DA 03-02)

**7a. Chair Schafer** stated that the Commission's consideration of the City of Irvine's application to annex MCAS El Toro would make history in Orange County. She

reminded members of the public that land use planning is not among the criteria that the Commission considers when reviewing a given application. She said that the commissioners had put tremendous effort into reviewing and understanding all the information put before them by staff and the public related to the application.

Executive Officer Smith said that staff would present a summary of the MCAS El Toro annexation, providing a brief overview of the application filed by the City of Irvine, the findings related to the project's fiscal feasibility, and staff's analysis and recommendations. She thanked Dan Jung, Glen Worthington, and Joel Kuperberg from the City of Irvine for their professionalism and timeliness in submitting information to LAFCO. She further acknowledged the fine work done by LAFCO's consulting team from Economic & Planning Systems, Inc. (EPS), Walter Keiser and James Edison. She expressed her appreciation to LAFCO staff, particularly Assistant Executive Officer Bob Aldrich and Policy Analyst Kim Koeppen for their tireless efforts in developing the staff report.

Ms. Smith summarized the order of presentations. She said that Ms. Koeppen would begin the staff presentation, describing the project's background and summarizing the City of Irvine's application, followed by Mr. Aldrich, who would describe LAFCO's statutory requirements in reviewing the proposed annexation.

**Commissioner Silva** interrupted, stating that he had just been presented with extra documentation related to the annexation under consideration. He expressed concern that he would not have enough time to review all of the information and give it due consideration. He recommended that in the future the commissioners be presented such information well in advance of the Commission meeting so that they might be better prepared.

Ms. Smith apologized to the Commission for the belated availability of the documentation before them. She explained that the materials were brought to the meeting by members of the public and were not made available in advance of the Commission meeting because the documentation hadn't been delivered to staff until shortly before the call to order.

Ms. Smith continued her summary of morning's presentation, stating that Walter Keiser from EPS would follow staff's presentation and provide an overview related to the fiscal feasibility of the project. She said that Mr. Aldrich would present staff recommendations and added that Irvine's city manager would present before the Commission with comments from the city. She stated that the public hearing would follow thereafter.

Ms. Smith indicated that outdated bylaws for the 501(c)3 corporation were inadvertently included as an attachment to the staff report. She said that the updated bylaws had been subsequently provided to the Commission. Ms. Smith introduced Policy Analyst Kim Koeppen to begin staff's presentation.

**Chair Schafer** requested that the commissioners hold all of their questions and comments until following the close of the public hearing.

Ms. Koeppen provided a brief history of MCAS El Toro and related ballot initiatives. She then presented a summary of the City of Irvine's application to annex the territory, including an overview of the city's base plan and overlay plan development options. She further summarized the provision of municipal services upon annexation and the governance of the Great Park Corporation. Ms. Koeppen mentioned that the City of Irvine proposes two major sources to generate the estimated \$372M needed to fund the infrastructure of the Great Park: 1) fees generated from the development agreement between the city and the developer and 2) proceeds from the formation of the community facilities district. Ms. Koeppen introduced Assistant Executive Officer Bob Aldrich.

Mr. Aldrich stated that LAFCO has no authority to regulate land use. He said that the Commission is required to consider three factors in reviewing the proposal: 1) Is there a need for community services to serve the annexation area? 2) Is the proposal consistent with the Commission's policies? 3) Does the City of Irvine have adequate financial resources to extend services to the annexation area? Mr. Aldrich stated that development of the territory is imminent and will require the extension of municipal services. He added that the territory has been within the City of Irvine's sphere of influence since 1973 and that the City of Irvine is the only logical service provider for the territory.

Mr. Aldrich summarized the city's innovative financing plan, which would be driven by a buyer auction of the four parcels that comprise the annexation territory. He said that the city's overlay plan, which allows additional development entitlements, would allow the city to maximize the economic potential of the property. He stated that the winning bidders would be required to enter into a development agreement with the city, an agreement which obligates the developer to pay significant development impact fees and assist the city in forming a community facilities district to help fund the infrastructure necessary to support the land uses under the overlay plan. Mr. Aldrich introduced Walter Keiser of EPS to present a detailed overview of the fiscal/financial aspects of the city's plan.

Mr. Keiser, a managing principal with EPS, presented before the Commission. He indicated that the city's plan presented some unique challenges that required substantive analysis to ensure the fiscal feasibility of the project. He provided an overview of the approach taken in conducting the fiscal analysis, which included a critical review of the information provided by the city. He anticipated that at build-out the city would experience a positive net fiscal balance of \$500K annually, and he added that the County could expect \$1.6M annually. He stated that, though there are inherent risks in predicting future market conditions, his firm took great care in conducting the fiscal analysis and feels comfortable that the city's financing plan is robust and will be sound moving into the future.

Mr. Aldrich concluded staff's presentation with a brief timeline of next steps followed by staff's recommendations. He indicated that the Commission's approval of the application would be followed by the mandatory 30-day request for reconsideration period. He said the certificate of completion could be recorded with the County Clerk in December, with the area officially becoming part of the City of Irvine upon recordation of the certificate of completion. Mr. Aldrich introduced Alison Hart, Irvine's city manager, to provide comments to the Commission related to the proposed annexation.

Ms. Hart asked for the Commission's support of the city's annexation application. She reminded the Commission that the annexation territory has been in the City of Irvine's sphere of influence for over thirty years, making the city the logical service provider for the territory. She stated that the passage of Measure W in 2002 was followed by the Board of Supervisors' action in April 2002 requesting that the city assume land use planning related to MCAS El Toro and provisionally supporting annexation of the base to the city. She added that the Department of the Navy issued its record of decision announcing its desire to dispose of the base by means of a public auction and work directly with the City of Irvine to entitle the property consistent with the spirit of Measure W. She said that the Irvine city council adopted the Orange County Great Park Land Use Plan, which is consistent with the intent of Measure W, in May 2003. She summarized the Department of the Navy's support of the city's annexation of the former base and added that the city concurs with LAFCO's independent financial analysis. She delivered a letter from Mayor Larry Agran on behalf of Irvine's city council expressing appreciation for the Commission's consideration and also to compliment LAFCO staff for its hard work and professionalism.

**Chair Schafer** indicated that the Commission would take a short recess to review some of the documentation delivered just prior to the meeting.

Following a ten-minute recess, **Chair Schafer** reconvened the meeting. She opened the public hearing, requesting that speakers be concise in their comments.

**Commissioner Silva** interjected that he is an alternate on the Commission and would not be voting on the application. **Chair Schafer** stated that **Commissioners Bouer** and **C. Wilson** are also alternates, adding that **Commissioner C. Wilson** would further be abstaining from the discussion regarding the proposal.

**Commissioner Withers** asked if there would be a time limit for the speakers. **Chair Schafer** explained that each speaker would be allotted three minutes to deliver his/her comments.

Referring to the speaker cards submitted, Executive Officer Smith called members of the public to provide their comments to the Commission.

Bonnie O'Neil, Robby Conn, Norman Ewers, John Bollinger, Charles Griffin, Bill Turner, Ann Watt, Kendall Neisess, Eleanor Tucker, Shirley Conger, James

Nagamatsu, Robert Hanley, Tom Naughton, William Kearns, Ralph Morgan, Jr., Tom Anderson, Larry Root, Allan Beek, Rachel Perez-Hamilton, Richard Taylor, Jim Skawinski, George Margolin, C. McCracken, Adriana Fourcher, Jack Wagner, and Ben Leland spoke in opposition of the annexation of MCAS El Toro to the City of Irvine. They cited various reasons for their opposition of the annexation, including concerns related to the: accuracy/reliability of the fiscal analysis and its assumptions; ability of the City of Irvine to provide municipal services to the area; eventual tax increases to Irvine residents to support the infrastructure/development of the territory; development/uses inconsistent with the spirit of Measure W; traffic impacts resultant of development within the territory; site clean-up and remediation costs; potential economic strain on other County residents in the future; need for a commercial airport at El Toro; eventual development of the “buffer zone” area outside the base; contaminants at the base unsafe for park development; lost revenue to the County for the sole benefit of the City of Irvine; outcome of the lawsuit challenging the city’s EIR; need for commercial development at the site to create jobs; enormity of debt incurred through bonds to develop the territory; expansion of urban sprawl; composition of the Commission weighted towards South Orange County; control and prevention of fires in the Great Park; and failure of the city to secure the required written consent of the FAA as a property owner.

Cristi Cristich, Darrell Nolta, and Leonard Kranser spoke in support of the City of Irvine’s application to annex MCAS El Toro.

**Chair Schafer** requested further public comments on the application. She received no response and closed the public hearing without any additional statements from the public. **Chair Schafer** indicated that the Commission would take a short recess before continuing with the meeting.

Following a ten-minute recess, **Chair Schafer** reconvened the meeting. She explained that staff would provide information to address many of the concerns raised by members of the public.

Executive Officer Smith called upon Walter Keiser to address concerns related to the fiscal analysis conducted by EPS. He stated that, while there is space reserved for educational uses within the Great Park development, it has not been decided if there will be a CSU campus or some other public or private university. He said the transfer of the land for those educational uses would come from one of the developers, not from the city or state. He clarified that any financial implications of the land transfer would be addressed in the agreement between educational institution and the developer.

Mr. Keiser stated that, in his professional experience, he believes that there is sufficient incentive/motivation for developers to enter into the development agreement with the city to secure the additional development entitlements allowed by the overlay plan. With regard to the economic forecasting, he said that EPS uses conservative assumptions in all of its work, but he acknowledged that there is no way to accurately predict market fluctuations or changes in the revenue forecast. He said

that such fluctuations and changes could likely result in a delay in the completion of the development or other revenue restructuring but didn't, in his opinion, constitute a fatal flaw in the overall fiscal viability of the project.

At **Commissioner S. Wilson's** request, Mr. Keiser related his firm's experience in conducting fiscal analyses for base closures in other parts in the country, including approximately twenty base closures over the last two decades.

Joel Kuperberg, attorney for the City of Irvine, presented before the Commission to address the allegation that the city failed to secure the required written consent of the FAA as a property owner. He said that the federal government owns the land in question. He added that the Department of the Navy transferred a portion of the territory to the FAA but that the U.S. Congress delegated full authority of the reuse and disposition of this property to the Department of the Navy. He cited government code section 56049 as defining the landowner as the actual landowner or any legal representative of the landowner, in this case the Department of the Navy which has submitted a letter supporting the annexation. He added that the Department of Transportation, the parent body of the FAA, fully supports the reuse plan of the Department of the Navy, which includes the city's annexation process.

Commenting on the legality of the environmental documentation before the Commission, Legal Counsel Clark Alsop cited state CEQA guidelines section 15233, which indicates that, in the absence of a court injunction or stay, LAFCO shall assume that the EIR fully meets state CEQA requirements. He said the applicant takes the risk that the LAFCO action could be invalidated if the courts later decide that the EIR is somehow deficient.

**Chair Schafer** requested questions from the Commission.

**Commissioner S. Wilson** stated that there were several comments made about the fiscal stability of the city's school districts. City staff clarified that the Irvine Unified School District is a separate, autonomous legal entity and that there is no relationship between the city's finances those of the school district.

**Commissioner Smith** raised questions about the costs related to the three million tons of aggregate runway material that will be broken up and hauled away from the former base. Dan Jung from the City of Irvine responded that the city has issued an RFQ for interested parties to bid on the materials on a no-cost basis, adding that such strategies have been employed successfully in other base closures, including Stapleton, CO. He said that there is a proven track record for using such material for recycling and redevelopment onsite as well as removing the materials for offsite uses. Mr. Keiser affirmed the city's claims as being accurate. He said that in many cases the removal process can be done at no cost but added that the fiscal plan is robust enough to absorb any residual costs related to the demolition and removal of materials.

**Chair Schafer** encouraged discussion amongst the commissioners.



**Commissioner Bressette** stated that the Commission's actions are dictated within the CKH Act and should be based on the pragmatic, technical aspects of the project as it relates to the law. He said that there was no technical reason to deny the application. He said he was satisfied that the consultant's fiscal analysis was unbiased and accurate. He encouraged the Department of the Navy to reopen the commissary at El Toro as his personal preference. He also thanked the city and LAFCO staffs and the consultants from EPS for their hard work and diligence.

**Commissioner Bressette** moved that the Commission adopt staff recommendations and resolution CA 03-15. **Commissioner Herzog** seconded the motion.

**Commissioner Smith** commented that the overwhelming number of public speakers spoke against the annexation and offered very compelling and articulate reasons why the Commission should deny the city's application. He reiterated his concerns regarding the disposal of the aggregate materials and its effect on the overall financial impacts on the project. He also expressed concern regarding the assumptions encompassed in the overlay plan and the possibility that the project could put the County in a precarious financial situation if general fund moneys were diverted to support the project at some point in the future. He stated that the lack of FAA approval also made him uncomfortable. He said he would not support the annexation until such concerns could be adequately addressed.

**Commissioner Campbell** stated that the passage of Measure W in March 2002 was demonstrative of the public's support of the Great Park plan. He complimented the City of Irvine for adhering to the spirit of Measure W and its organization of the Great Park Corporation. He said that the expeditious completion of the park would be legacy for current and future generations of Orange County residents. He reminded the Commission that the County willfully entered into a fair pre-annexation agreement with the City of Irvine and that the County completed a financial analysis of its own at that time. He expressed his support of the city's annexation.

**Commissioner Silva** restated that, as an alternate, he would not be voting on the annexation issue. He expressed doubt that the Great Park would come to fruition and stated that he was opposed to approving the city's application to annex MCAS El Toro.

**Commissioner S. Wilson** commended staff for its thorough analysis and recommendations. She said that she trusts the expertise of the consultants from EPS in their analysis of the project's fiscal viability and has faith that the City of Irvine will adhere to the spirit of Measure W in the development of the Great Park.

**Commissioner Bouer** echoed those same sentiments.

**Commissioner Herzog** reiterated **Commissioner Bressette's** earlier comments related to the mandates of the CKH Act. He emphasized that LAFCO is precluded from making land use decisions. He said that the County's actions of April 2002 turned over land use planning for the base to the City of Irvine and clearly stated that

the County did not want ownership of the base. He stated that the city's land use plan has been available for public review and comment for over six months. He reminded the Commission that the County entered into a pre-annexation agreement with the City of Irvine and adopted a resolution that clearly states that MCAS El Toro should be annexed by the city. He said that the annexation is consistent with LAFCO's policies and consistent with the County's own external restructuring policies.

**Commissioner Withers** recapped his interest in the annexation as resident of the City of Irvine and as a member of the Irvine Ranch Water District's board of directors. He expressed confidence that the overall framework of the Great Park development is sound and voiced his support of the annexation.

**Chair Schafer** thanked everyone for their time and attention. She also thanked staff for its hard work. She echoed **Commissioner Smith's** concerns, expressing reservations about approving the annexation with so many questions left unanswered. She said she would prefer continuing the consideration of the annexation until December.

**Chair Schafer** asked for additional comments from the Commission. Receiving none, she called for a roll call vote. Commission Clerk Danielle Ball completed the roll call vote.

**MOTION:** Approve the MCAS El Toro Annexation to the City of Irvine subject to the terms and conditions outlined in the staff report (Randal Bressette)  
**SECOND:** Peter Herzog  
**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Susan Wilson, John Withers  
**AGAINST:** Arlene Schafer and Charles Smith  
**ABSTAIN:** None  
**MOTION PASSED**

- 6c. **Chair Schafer** returned to agenda item 6c, stating that no further discussion was needed. She made a motion to receive and file the report.

**MOTION:** Approve consent calendar items 6c (Arlene Schafer)  
**SECOND:** Bill Campbell  
**FOR:** Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers  
**AGAINST:** None  
**ABSTAIN:** None  
**MOTION PASSED**

- 7b. **Commissioner Bouer** mentioned that he is a trustee of the Orange County Vector Control District and therefore would abstain from any discussion involving agenda item 7b.

Executive Officer Smith stated that the staff's written report was sufficient to request that the Commission move forward with staff's recommendations to approve the TRA Annexation to the Orange County Vector Control District.

**MOTION:**        **Approve the TRA Annexation to the Orange County Vector Control District subject to the terms and conditions outlined in the staff report (Peter Herzog)**

**SECOND:**       **Randal Bressette**

**FOR:**           **Randal Bressette, Bill Campbell, Peter Herzog, Arlene Schafer, Charles Smith, Susan Wilson, John Withers**

**AGAINST:**      **None**

**ABSTAIN:**      **None**

**MOTION PASSED**

**8. COMMISSION DISCUSSION**

a.) Registration Materials for OCLS III

- 8a.** Executive Officer Smith requested that the commissioners review the registration materials provided for OCLS III and submit their registration forms at their earliest convenience.

**9. COMMISSIONER COMMENTS**

**Chair Schafer** requested additional comments from the commissioners.

**Commissioner Campbell** complimented staff for their work on the El Toro annexation. He also thanked members of the public for participating in the public hearing and offering their well-articulated comments to the Commission.

Receiving no additional response, **Chair Schafer** closed the commissioner comment agenda item.

**10. INFORMATIONAL ITEMS**

None

**11. CLOSED SESSION**

None

**12. ADJOURNMENT**

**Chair Schafer** adjourned the meeting at 12:07 p.m.

DANA M. SMITH  
Executive Officer  
Orange County Local Agency Formation Commission

By: \_\_\_\_\_  
Danielle M. Ball  
Commission Clerk